

BOEHM, KURTZ & LOWRY

ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

Via E-File

August 16, 2018

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case Nos. 15-1830-EL-AIR, 15-1831-EL-AAM and 15-1832-EL-ATA

Dear Sir/Madam:

Please find attached the POST-HEARING BRIEF OF THE OHIO ENERGY GROUP for filing in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

MLKkew

Encl.

Cc: Certificate of Service

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter Of The Application Of Dayton Power And Light Company For An Increase In Its Electric Distribution Rates.	:	Case No. 15-1830-EL-AIR
	:	
	:	
In The Matter Of The Application Of The Dayton Power And Light Company For Accounting Authority.	:	Case No. 15-1831-EL-AAM
	:	
	:	
In The Matter Of The Application Of Dayton Power And Light Company For Approval Of Revised Tariffs.	:	Case No. 15-1832-EL-ATA
	:	

**POST-HEARING BRIEF
OF THE OHIO ENERGY GROUP**

The Ohio Energy Group (“OEG”) submits this Brief in support of its recommendations to the Public Utilities Commission of Ohio (“Commission”) in this proceeding. OEG’s members who are participating in this intervention are: Cargill Incorporated; General Motors LLC and TimkenSteel Corporation. OEG’s recommendations are set forth below.

INTRODUCTION

On November 30, 2015, Dayton Power & Light Company (“DP&L”) filed an Application to increase its electric distribution rates by \$65.8 million. On March 12, 2018, Commission Staff submitted its Staff Report on the findings of its investigation regarding DP&L’s Application. After the Staff Report was issued, DP&L, Commission Staff, and the intervening parties engaged in months of review and negotiations culminating in a Stipulation and Recommendation (“Stipulation”) supporting a \$29.7 million rate increase filed on June 18, 2018. The Stipulation

was signed by the Company, Commission Staff, OEG, The Office of the Ohio Consumers' Counsel, Ohio Hospital Association, Ohio Partners for Affordable Energy, Ohio Environmental Council, Environmental Defense Fund, Environment Law & Policy Center, Edgemont Neighborhood Coalition, Natural Resources Defense Council, Walmart Stores East, L.P., Sam's East, L.P., and The Kroger Co. Several parties also expressly indicated that they did not oppose the Stipulation, including Industrial Energy Users-Ohio, Ohio Manufacturers' Association Energy Group, Buckeye Power, Inc., One Energy Enterprises, LLC and the City of Dayton.

For the reasons set forth below, OEG recommends that the Commission issue an order approving the Stipulation in its entirety.

ARGUMENT

I. The Stipulation Satisfies the Commission's Three-Prong Test For Determining Whether A Settlement Is Reasonable And Should Be Adopted.

A. The Stipulation Is The Product Of Serious Bargaining Among Knowledgeable Parties.

The parties either explicitly supporting or not opposing the Stipulation represent a wide variety of diverse interests, including the interests of the utility, Commission Staff, the Office of the Ohio Consumers' Counsel, municipal customers, low-income advocates, industrial customers, commercial customers, hospitals, and renewable energy advocates. Most if not all of those parties have significant experience in Commission proceedings and each was represented by competent counsel. Moreover, the parties to these proceedings had ample time to review and analyze issues surrounding DP&L's proposed ESP, and were well-acquainted with those issues during the course of settlement discussions. In those discussions, significant compromises were

made on behalf of many of the parties in order to reach a reasonable settlement in these proceedings. The Stipulation therefore satisfies the first prong of the Commission's test.

B. The Stipulation Benefits The Public Interest.

The negotiations between DP&L and the parties resulted in a Stipulation that is superior to DP&L's litigation position. The Stipulation recommends a rate increase of \$29.8 million, which is significantly less than DP&L's originally proposed \$65.8 million rate increase. This includes an adjustment to reflect the tax expense savings resulting from the lower federal income tax rate resulting from the Tax Cuts and Jobs Act ("TCJA") on a going-forward basis.¹ The Stipulation also recommends that DP&L commence a proceeding no later than March 1, 2019 to return to customers the distribution-related, eligible excess accumulated deferred income taxes resulting from the TCJA and the full balance of the regulatory liability ordered by the Commission effective January 1, 2018 in Case No. 18-47-AU-COI. The Company also agrees to withdraw and waive several of its arguments that a refund of deferred amounts would be unlawful or unreasonable. The waiver of these arguments creates rate certainty and will spare intervening parties the costs of protracted legal proceedings.

C. The Stipulation Does Not Violate Any Important Regulatory Principle Or Practice.

None of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice. Rather, the Stipulation advances important policies and principles, including facilitating the state's effectiveness in the global economy, ensuring the availability to customers of adequate and reliable service, protecting at-risk populations,

¹ The TCJA lowered the federal corporate income tax rate from 35% to 21%.

promoting innovation in technology for infrastructure, and facilitating retail shopping. The Stipulation therefore satisfies the third prong of the Commission's test.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should approve the Stipulation.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255 Fax: (513) 421-2764

E-Mail: mkurtz@BKLawfirm.com

kboehm@BKLawfirm.com

jkylercohn@BKLawfirm.com

August 16, 2018

**COUNSEL FOR THE OHIO ENERGY
GROUP**

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 16th day of August, 2018 to the following:



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

michaelschuler@aes.com
jsharkey@ficlaw.com
djireland@ficlaw.com
chollon@ficlaw.com
thomas.mcnamee@ohioattomeygeneral.gov
natalia.messenger@ohioattomeygeneral.gov
christopher.healey@occ.ohio.gov
teny.etter@occ.ohio.gov
fdan@mwncmh.com
mpritchard@mwncmh.com
sechler@carpenterlipps.com
paul@carpenterlipps.com
bojko@catpenterlipps.com
dressel@catpenterlipps.com
mfleisher@elpc.org
kfield@elpc.org
thawrot@spilmanlaw.com
rkelter@elpc.org
jvickers@elpc.org
slesser@calfee.com
jlang@calfee.com
talexander@calfee.com
ktreadway@oneenergyllc.com

stephanie.chmiel@thompsonhine.com
dwilliamson@spilmanlaw.com
chanis@spilmanlaw.com
stephen.chriss@walmart.com
greg.tillman@walmart.com
mwamock@bricker.com
dborchers@bricker.com
joliker@igsenergy.com
mnugent@igsenergy.com
John.Degnan@us.af.mil
Thomas.Jemigan.3@us.af.mil
Ebony.Payton.ctr@us.af.mil
ejacobs@ablelaw.org
jdoll@djflawfnm.com
mcrawford@djflawfnm.com
mjsettineri@vorys.com
glpetmcci@vorys.com
whitt@whitt-stmtevanat.com
campbell@whitt-stmtevanat.com
glover@whitt-stmtevanat.com
tdoughetty@theoec.org
mleppa@theoec.org
jfinnigan@edf.com
rdove@attorneydove.com
swilliams@nrdc.org
cmooney@ohiopartners.org

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/16/2018 4:26:45 PM

in

Case No(s). 15-1830-EL-AIR, 15-1831-EL-AAM, 15-1832-EL-ATA

Summary: Brief Ohio Energy Group (OEG) Post-Hearing Brief electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group